

Both sides examine legal options in Glen Cove park development dispute

By Tony Burchyns / Vallejo Times-Herald

Posted: 05/18/2011 01:00:48 AM PDT



Native American descendants chant and drum recently at the site of a proposed park in protest to the development of the shellmound in Glen Cove by the Greater Vallejo Recreation District. (Chris Riley/Times-Herald file photo)

Now what?

That's what many are asking now that protesters have occupied a disputed Native American burial site in Glen Cove for more than four weeks.

Greater Vallejo Recreation District officials want to build a park, but grassroots activists say the plans would "desecrate" their land.

The path forward, however, remains murky. It could boil down to money, and the city says it won't pay for a potentially costly legal fight.

"We are not stalling to stall. We really are trying to find a way out of this that keeps as many people as happy as possible," said GVRD board chairman Gary Salvadori, a former Vallejo planning commissioner. "It's not easy, but that's truly what we've been working toward since the beginning."

Meanwhile, both sides are examining their legal options.

Whose land?

GVRD officials have been in almost daily contact with Kesner Flores, a member of the Cortina Indian Rancheria band of Patwin Indians. He is acting as an intermediary between the district and three Patwin tribes.

The Colusa, Corntinas and Yocha Dehe bands support the project, Flores said, because it would cap, with a foot of soil, vulnerable archaeological resources supposedly belonging to the tribes.

“There is one thing that a tribe does not do -- take another tribe’s territory,” said Flores, referring to the protesters, who he considers a “community group” with no tribal authority.

GVRD board members met in closed session last Thursday. They gave the district’s legal counsel added research to do, but would not give details.

“The major goal is to get the project completed,” GVRD General Manager Shane McAfee said. “Obviously the best of all cases is if they left on a voluntary basis.”

If the district seeks an injunction to remove the group, the protesters’ lawyer, Jose Luis Fuentes, said he’s prepared to counter sue for a federal injunction against GVRD. The protesters would claim the project violates their interests under the Native American Graves Protection and Repatriation Act and the National Historic Preservation Act.

History unclear

A third legal issue protesters may raise is the land’s ownership. Fuentes said Gen. Mariano Vallejo was negotiating a treaty with Native Americans in 1850, “but there is a question of whether it was ratified or if those negotiations ever concluded.”

As a result, Fuentes said both sides are trying to determine if the Stremmel family, the previous owner of most of the 15-acre site, legally owned the land.

“Instead of going to court and battling this out and spending lots of money,” Fuentes said, he would favor both sides making a joint request to the U.S. Secretary of the Interior to sort out “the whole enchilada.”

“It’s not an easy walk through this forest, but in the end it’s about doing the right thing. You don’t put a parking lot and a toilet on sacred land.”

Broke city can’t help

GVRD officials have met twice with interim City Manager Phil Batchelor and once with Police Chief Robert Nichelini and the city attorney. City officials say they have GVRD’s back, but will not provide any money for a court battle at a time when the city is spending hundreds of thousands of dollars on bankruptcy attorneys.

Furthermore, Vallejo Police Department brass, mindful of those purporting to exercise free speech and freedom of religion rights, say they won’t intervene without a court order.

“At the recommendation of our legal counsel, we have asked that GVRD obtain a clarifying court

order to declare whether the persons who are camping and demonstrating at Glen Cove are engaging in protected activity, or are engaging in trespassing or other prohibited activities which could result in an arrest,” Capt. Dave Jackson said in an email.

Also, the injunctive process might offer a more permanent resolution to the situation, Jackson said. “At this time, the city lacks the information and clarity to engage in an enforcement action against the demonstrators, though this may change if there is an immediate threat to public safety,” he added.

Salvadori said, meanwhile, “Physically removing the protesters won’t do any good because they will go right back. We’re trying to make something happen so they will voluntarily stop breaking the rules.”

Plans would add trails

GVRD chairman Salvadori says the frustrating part is his belief that the wider community favors the project, or would, if they knew more about it. The plans call for returning the land to a more natural state and adding new roads and trails.

“There’s probably a large segment of Vallejo for whom the project doesn’t matter,” Salvadori said. “But the people who have really seen what the plan is, typically have a very positive reaction to it.”

There also is at least some frustration among Glen Cove residents.

“I’m tired of the noise, tired of them being inconsiderate of us, tired of seeing RVs and Porta-Potties when I pull into my house” said Ross Taylor, a Shoal Drive resident who’s fed up with the occupation.

Others, however, support the activists.

April Moore, a homeowner on Shoal Drive East, said “at least a few of us” are opposed to the project. “In particular, we do not want the parking lot or the bathroom,” Moore said, referring to GVRD’s planned improvements for the area.

As for complaints the protesters filed weeks ago with the state Attorney General’s Office and the United Nations, Salvadori said, “We are taking them very seriously.”

But he added, “The fact of the matter is, anyone can file a complaint. The question is how seriously are the attorney general’s office and the U.N. taking it? And, so far, we haven’t heard from them.”

http://www.timesheraldonline.com/ci_18085860